

REMARKS

This is in response to the Office Action of February 2, 2009 in which the Examiner made certain formal objections to the claims.

Applicant wishes to thank the Examiner and his Supervisor for the opportunity to discuss the application on March 3, 2009. During the discussion, it was determined that the claims are in proper form and that the technical objections to the claims have been overcome.

Applicant has claimed the invention as a tube alone and a tube in combination with a plate. It is believed that these are in proper form, and the Examiner has agreed.

Claim 1 sets forth a combination. It is believed the preliminary phrase "in combination" is sufficient to place the subject matter thereafter into the body of the claim. In other words, the words following "in combination" are part of the claim. The applicant recites the structure of the plate and then recites the structure of the tube after the word comprising. It is believed that this form of claim structure is proper. Applicant knows of no requirement that the phrase "in combination" must follow "comprising". Nor does applicant know of any requirement that an applicant cannot recite comprising within the claim with respect to a separate element.

With respect to the objection regarding the through bores, applicant states that the bores are through bores, which implies that they go through the plate. However, applicant has recited a top surface and a bottom surface and a through bore extending from the top to the bottom surface.

With respect to the orientation of the cross section of the bores, the bores are recited as having a square cross section parallel to the top and bottom surfaces of the plate.

The term 'adapted' has been deleted in claims 1 and 13.

The term "deformable" is consistent with the specification page 6, lines 10-11 wherein it is noted that the formation at the end of the tube is made

of elastic material. This is how the material forms a snap fit engagement with the bottom of the plate.

The term other terms such as 'engage', 'substantially', 'near', 'corresponding' and 'flared' are all terms with known meanings which are traditionally used in claims. It is not understood how these terms are allegedly indefinite.

The Examiner's objection to claims 2-5 regarding the additional limitations is not understood. Those limitations are additional parts added to the tube structure and are thus believed to be proper limitations. A tube with a foil top is still a tube.

The term "formation' has been substituted for 'snap fit portion' in claim 9.

The Examiner's objection is respectfully traversed. The drawings, particularly Figs. 1, 4 and 5 show the tubes in the through bores in the plate. Applicants note that the description of Figs. 4 and 5 describes the tubes in the bores of the plate. In establishing a disclosure, applicants may rely not only on the specification and drawing as filed but also on the original claims if their content justifies it. See MPEP § 608.01(I). Applicants believe they can rely on the reference to the plate in the description of the drawings as well as the drawings themselves that illustrate the combination. Applicants know of no authority that supports the Examiner's statement that applicant's assertion of an exemplary embodiment is insufficient disclosure. Indeed, applicants believe that the example is a suitable disclosure. During a telephone conversation with the Examiner, applicants stated that the drawings provide sufficient support for the claimed combination. Applicants offered to add a short comment in the Specification. The Examiner stated that this would add new matter. Applicants assert that the drawing is supportive of an amendment if it shows the feature. The Examiner

requested a citation to the MPEP. The Examiner's attention is respectfully directed to MPEP 2163(II)(A)(3)(a):

An applicant may show possession of an invention by disclosure of drawings or structural chemical formulas that are sufficiently detailed to show that applicant was in possession of the claimed invention as a whole. See, e.g., *Vas-Cath*, 935 F.2d at 1565, 19 USPQ2d at 1118 ("**drawings alone may provide a 'written description' of an invention as required by Sec. 112*"); *In re Wolfensperger*, 302 F.2d 950, 133 USPQ 537 (CCPA 1962) (the **drawings of applicant's specification provided sufficient written descriptive support for the claim limitation at issue**); *Autogiro Co. of America v. United States*, 384 F.2d 391, 398, 155 USPQ 697, 703 (Ct. Cl. 1967) ("In those instances **where a visual representation can flesh out words, drawings may be used in the same manner and with the same limitations as the specification.**")**

Applicants have claimed and disclosed the invention as a tube and a plate. The drawings show the combination, and the specification refers to the plate and tubes. The specification discloses the two parts in a cooperative arrangement and describes how they cooperate. It is not believed necessary to say anything further. However, if the Examiner insists on a further discussion, applicants are willing to provide additional language in the specification to discuss the drawing figures showing the combination.

Claim 11 has been amended to delete the period in the second next to last line.

Claims 1 and 12 have been amended to recite the bottom and top surfaces of the plate.

Claim 11 recites a flared portion. The term "connector" has been deleted.

The Examiner has rejected the claims as directed to a tube. New claims 13 and 14 recite a tube alone. Claims 1-12 recite the combination.

It is believed that the Examiner has withdrawn the formal objections to the claims.

The Examiner indicated that he would consider the allowability of the claims over Day (US20020098126) and over Verwohlt (US 5514343). Day is directed to a tube. Verwohlt is directed to a tube and plate.

With respect to the rejection of the claims over Day, it is submitted that the tube in the reference does not have a deformable formation at the end which is enlarged relative to the intermediate portion. As noted earlier, the deformable or flexible formation at the end of the claimed tube allows the tube to fit through the bore, pass beyond the bottom opening thereof and snap fit to engage the bottom of the plate. This is not possible in the reference. In claim 13 the language refers to the size of the deformable formation relative to the size of the through bore. In claim 14, the language refers to the size of the formation relative to the body portion below the shoulder. In each case, the bottom of the tube is bigger than the body of the tube so that the tube can be snap fit into the plate.

Applicant is entitled to claim the invention in various ways. One way is to claim the tube alone, as this is the element which cooperates with openings in the plate. Likewise, applicant is entitled to claim the tube and plate in combination. In either case, the tube having a formation at the end is different than the cited tube having a formation spaced from the end. In addition, the tube in the reference has a different vertical cross-section than the corresponding structure claimed tube. The Day reference has a gradually increasing cross-section or diameter beginning with a reduced cross section, smaller than the size of the cap, at the bottom and gradually increasing as one moves upwardly. The claimed tube has a flexible formation at the bottom with cross-section which is larger than the opening in the plate so that it can pass through the bore and snap fit with the bottom

surface. Immediately adjacent the formation, the cross-section or diameter of the tube at the bottom is reduced so that it is smaller than the bore. The tube then increases in diameter in the upward direction. Accordingly the Day reference constantly increases in diameter as one moves up the tube, and the claimed tube has a diameter is larger than the bore, then decreases in size and increases in size as one moves up the tube.

With respect to Verwohlt, Applicant noted the differences in the Preliminary Amendment filed with the RCE of the present application. Verwohlt, not having been cited and applied, is believed to have been overcome. However, Applicant would respectfully direct the Examiner's attention to and reiterate the substantive arguments presented in the Preliminary Amendment with respect to Verwohlt.

The differences between the claimed structure and the references are not trivial. In each case, the larger lower end of the tube allows the tube to snap fit into the plate, while at the same time keeping the plate size uniform. The references have no such function or purpose. Both Day and Verwohlt have lower ends which are smaller than the body portion. In the invention, the lower end is larger than the body portion and is deformable so that it can fit through the bore in the plate and snap fit therein.

The objections to the dependent claims are believed to be moot in view of the patentability of the claims from which they depend.

It is believed that the claims fully distinguish over the references. The combination suggested by the Examiner does not follow because even if the combination were appropriate, the claimed structure would not follow. The references do not engage the bottom surface by extending through the through holes.

In view of the foregoing, it is respectfully requested that the Examiner reconsider his rejection of the claims, the allowance of which is earnestly solicited.

If additional fees are required, the Director is authorized to charge Deposit Account 504147 or credit any overpayment thereto.

Respectfully submitted,

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